IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3943 of 2001
With
SPECIAL CIVIL APPLICATION No. 4246 of 2001
With
CIVIL APPLICATION - FOR VACATING STAY No. 5578 of 2003
In SPECIAL CIVIL APPLICATION No. 4246 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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MOHIBULLAH USMANBHAI SHAIKH - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
PARTY-IN-PERSON for Petitioner

MS ARCHANA RAVAL AGP for Respondents

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CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date : 28/07/2005

ORAL JUDGMENT

1. The petitioner, by now aged 69 years, appearing as party-in-person, has invoked Article 226 of the Constitution in both the petitions with the

prayers, in effect, for retrospective successive promotions and interest, costs and compensation for the delays in payment of his due retiral benefits. Special Civil Application No.3943 of 2001 was initially summarily dismissed on 20.6.2001 with the observation that the petitioner had retired since long and the things which were already in existence since 1986 could not be disturbed and that the petition was thoroughly misconceived. Special Civil Application No.4246 of 2001 was also summarily dismissed on the same day with the observation that the petitioner had tried to take advantage of the situation by claiming Rs.14 lakhs and filing of such petition was nothing but abuse of process of the Court. Both the initial orders of this Court (Coram: P.B.Majmudar, J.) were carried in appeal by the petitioner and the order in Special Civil Application No.3943 of 2001 was quashed by the Division Bench and the matter was remanded with a request to decide the same on merits as early as possible preferably by the end of November, 2003 and the order in Special Civil Application No.4246 of 2001 was also quashed and the matter was remanded for decision in accordance with

law. The petitioner has also filed Civil Application No.5578 of 2003 in Special Civil Application No.4246 of 2001 making several other additional claims and interest thereon and despite issuance of Rule on 1.12.2003, no reply is filed by the respondent.

2. In Special Civil Application No.3943 of 2001, the claim for retrospective successive promotions is based mainly on the ground that the petitioner had succeeded in his earlier petitions, being Special Civil Applications No.59 of 1991 and 60 of 1991, whereunder the respondents were directed to consider the question of release of Efficiency Bar to the petitioner with effect from 1.1.1978 afresh ignoring the adverse remarks which were mentioned in the show cause notice dated 12.11.1981 and to give him all consequential benefits; and the petitioner was directed to be treated as in continuous service as an Office Assistant (Senior Clerk) with effect from 7.7.1976 with all consequential benefits. There is no dispute about the fact that the consequential benefits arising from the aforesaid direction have

been paid to the petitioner. The petitioner has argued on the basis of his continuous service and due promotions from time to time on account of the adverse remarks being ignored under the orders of this Court and the administrative decisions taken on that basis.

3. By filing an affidavit of Dr.S.P.Gosai, Deputy Director, Employment and Training, it is, in substance, stated and submitted that the petitioner was granted all the benefits accruing to him under the orders in Special Civil Application No.60 of 1991 and his subsequent representations for more benefits were rejected vide letter dated 6.11.2000. According to the notification dated 16.12.1978, departmental examination held by the Labour, Social Welfare and Tribal Development Department was required to be passed for further promotion and even promotion to the posts of Junior Employment Officer, Head Clerk, Research Assistant or Inspector in the office of the Director of Employment and Training could be made only on the basis of proved merits and efficiency from the persons holding the post of Senior Clerk,

Statistical Assistant, Accountant or Interviewer. The petitioner could avail of exemption from passing the examination on the ground of having completed 45 years of age on the appointed date for the purpose of confirmation or continuing in the same post, but, for the purpose of promotion to the post of District/ Assistant Employment Officer, he was required to pass Employment Exchange Qualifying Examination. The petitioner was working with the office of the respondent from 27.12.1961 as a Junior Clerk and he retired on 31.1.1995. By order dated 17.12.1973, he was promoted to the higher cadre of Assistant (Senior Clerk/Statistical Assistant) from 10.1.1974 and accordingly he had been working on that basis. By order dated 7.7.1976, he was reverted for administrative reasons. Pursuant to the decision dated 24.8.2000 in Special Civil Application No.60 of 1991, all the benefits of his promotion to the cadre of Senior Clerk were granted and even his promotion to the cadre of Junior Employment Officer, Class III, was considered with effect from 30.10.1986. Since the petitioner had already retired on 31.1.1995, all the benefits of promotions were granted notionally

without the petitioner having worked on such posts. Despite adverse confidential reports, he was allowed to cross Efficiency Bar with effect from 1.1.1978 and all the benefits accruing to the petitioner under the order in Special Civil Application No.59 of 1991 were granted and paid. When the petitioner approached the High Court alleging contempt of court in Miscellaneous Civil Application No.300 of 1996, it was clarified by the Division Bench of this Court that: *"The petitioner was considered for promotion on merits-cum-seniority basis and he is not found fit for promotion and, therefore, he is not promoted. Thus, it cannot be said that there is any non-compliance of the order passed by this Court on 2.5.1995. This Court in the order of 2.5.1996 has not directed the respondent to promote the petitioner but has only directed to grant all the consequential benefits in the event of releasing efficiency bar. Thus, it cannot be said that there is any breach of the order. Hence, the petition is liable to be dismissed".*

3.1 It is further stated on behalf of the

respondent that, pursuant to an interim order dated 18.12.1997 in Special Civil Application No.60 of 1991, a Special Departmental Promotion Committee was arranged. According to the decision dated 13.1.1998 of the said Committee, the petitioner was not found to be fit for promotion at any given point of time from the cadre of Junior Clerk to Senior Clerk. It is also submitted that the rules for departmental examination had come into force from 30.8.1979 and, according to Rule 8 thereof, the Director of Employment and Training of Gujarat State was required to hold examinations twice a year. Such examinations were not held before April, 1986 due to several reasons. But special departmental examinations were held thrice during the year 1982, 1983 and 1984 only for promoted Class II officers of the department, who were promoted after the rules came into force, to regularise their appointments as Class II officers. It is submitted that the petitioner could have appeared in the examination and cleared the same, but he did not or could not do so. Thus, according to the submission of the respondent, the impugned order dated 24.8.2000 granting all the possible

benefits, and even notional promotions, is required to be treated as fully favouring the petitioner and releasing all the benefits flowing from all the previous judgments in favour of the petitioner.

3.2 It was further submitted by learned A.G.P. Ms.Archana Raval that the benefits accruing from the aforesaid order dated 24.8.2000 were calculated and sought to be paid to the petitioner, but the petitioner had delayed acceptance of the same and such delay could not be attributed to the respondent; and hence the petitioner was not entitled to any amount by way of costs, interest or compensation.

4. It is apparent from the above record of facts that the original grievance of the petitioner of not allowing him to cross the Efficiency Bar on the basis of adverse remarks in his confidential reports for the years 1976-77, 1977-78 and 1978-79 has been fully redressed with retrospective effect, although as late as in the year 2000 and after a

series of legal battles. However, there is no legal basis for the claim that even upon all adverse remarks being ignored, the petitioner was entitled to promotion as a matter of right. Even as the petitioner is already granted two promotions on notional basis and allowed all the benefits thereof, the special departmental promotion committee constituted under the interim order of this Court has, by order dated 13.1.1998, clearly found and expressed the opinion that the petitioner was not fit for promotion at any given point of time even from the cadre of Junior Clerk to the cadre of Senior Clerk. Against that backdrop, what the petitioner is claiming is further promotion from the post of Junior Employment Officer, Class III to the post of Employment Officer, Class II (Gazetted) with retrospective effect either from the year 1983 or 1986. This is nothing short of asking for the moon, particularly when the aforesaid order dated 13.1.1998 is not challenged within reasonable time. Therefore, the first petition, i.e. Special Civil Application No.3943 off 2001 is found to be wholly devoid of

merits and required to be rejected.

5. In the second petition, i.e. Special Civil Application No.4246 of 2001, when notice was issued on 26.8.2003, the learned A.G.P.had made a statement that reply will be filed by the returnable date. But even after admission of the petition, no reply is as yet filed. Therefore, the statement in paragraph 2 of the petition to the effect that the payments vide order dated 24.8.2000 pursuant to the order in Special Civil Application No.60 of 1991, were delayed by nearly five years has to be accepted as true. It is also likely to be true in view of the fact that the decision in Special Civil Application No.60 of 1991 was rendered on 2.5.2000 and the order to make payments accordingly was issued on 24.8.2000, whereas the petitioner had retired on 31.1.1995. Therefore, naturally, the retiral benefits arising out of the difference of salary could have been paid after adjudication of the petitioner's claims had come to a close and the administrative decision to grant all possible benefits and not to challenge the order was

taken. Making that fact a ground of defence, learned A.G.P.submitted that the delay in payment of remaining retiral dues could not be attributed to the respondent. On the contrary, the respondent had taken appropriate steps to disburse the additional amounts to the petitioner within a reasonable time after the decision in Special Civil Application No.60 of 1991. The learned A.G.P.relied upon the affidavit-in-reply filed by the respondent in Letters Patent Appeal No.568 of 2001.

6. The petitioner relied upon several judgments of this Court and the Supreme Court, including the judgments in **S.R.BHANRALE v. UNION OF INDIA [AIR 1997 SC 27], R.KAPUR v. DIRECTOR OF INSPECTION [(1994) 6 SCC 589] and SAIJPUR BOGHA NAGARPALIKA OCTROI KARMACHARI MANDAL v. AHMEDABAD MUNICIPAL CORPORATION [1991 (2) G.L.H.186],** in support of the submission that he was entitled to not only interest but costs and compensation for the long-drawn legal marathon that he had to run for justice even after his retirement.

7. Apparently, once the cases were decided in favour of the petitioner and the respondent had accepted the liability to retrospectively pay higher wages on notional basis, the Court cannot enter into the exercise of examining whether the petitioner was entitled to such payments. It cannot be gainsaid either that the payments were delayed and, if the petitioner were allowed to cross the Efficiency Bar and granted due promotions at the appropriate time while he was in service, he would not have been required to go from one Court to another and he would have received all the due payments in time. Therefore, the fact remains that the payments of the amounts due to the petitioner were delayed by minimum of five years and it requires no proof that such amounts in the hands of the petitioner would have earned him at least interest. In such circumstances, Special Civil Application No.4246 of 2001 is required to be partly allowed. And, accordingly, the respondent is directed to pay to the petitioner, within a period of two months, interest at the rate

of 9% on the sum of Rs.1,39,070/= for the period from 31.1.1995 to 31.1.2000 along with costs of the petition quantified at Rs.3,000/-.

8. Rule is accordingly discharged in Special Civil Application No.3943 of 2001 and made absolute in Special Civil Application No.4246 of 2001.

9. Civil Application No.5578 of 2003 having as its subject-matter disputed claims of money related to the period of service from 1980 to 1987, it is rejected with the observation that the same may be treated by the respondent as a representation and appropriate order thereon may be passed within a reasonable time. It will, however, be open for the petitioner to take alternative remedy in respect of all such claims by initiating legal proceedings in the appropriate Court.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)